

CAUSE NO. PD-1003-20

IN THE COURT OF CRIMINAL APPEALS OF TEXAS FILED
COURT OF CRIMINAL APPEALS
5/3/2021
DEANA WILLIAMSON, CLERK

JUSTIN KING,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

From the 10th Court of Appeals, Waco
Cause No. 10-19-00354-CR

BRIEF FOR STATE

M. Brian Evans
County Attorney
Freestone County, Texas
110 S Keechi St.
Fairfield, Texas 75840
Texas Bar No. #24082972
903-389-3977

IDENTITY OF PARTIES AND COUNSEL

JUDGE PRESIDING:

The Honorable Patrick Simmons

DEFENDANT/APPELLANT:

Justin King

FOR THE DEFENDANT:

Michael L. Dahlenburg (Trial Counsel)
Law Office of Michael L. Dahlenburg
219 West Navasota Street
Groesbeck, Texas 76642

E. Allan Bennett (Appellate Counsel)
Sheey, Lovelace & Mayfield, PC
510 North Valley Mills Drive, Suite 500
Waco, Texas 76710

FOR THE STATE:

M. Brian Evans
County Attorney
Freestone County, Texas
110 S Keechi St.
Fairfield, Texas 75840

Jacob Ramsey
Assistant County Attorney

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STATEMENT OF THE CASE

The Reporter's Record will be referred to as "RR" unless otherwise noted. The Clerk's Record will be referred to as "CR" unless otherwise noted. Appellant's Brief will be referred to as "AB" unless otherwise noted. Appellee is referred to as "State".

Appellant pleaded guilty to the third degree felony charge of evading arrest or detention in a vehicle. Appellant pleaded true to an enhancement allegation which made the applicable punishment range that of a second degree felony. A jury assessed his punishment at 20 years imprisonment and a \$10,000 fine.

STATEMENT REGARDING ORAL ARGUMENT

The Court has advised the parties that oral argument will not be permitted.

GROUND PRESENTED

POINT OF ERROR ONE:

Appellant alleges the trial court committed error by conducting a pretrial proceeding in Appellant's absence. Appellant specifically refers to the silent record regarding a portion of the pretrial hearing.

STATEMENT OF FACTS

Appellant pleaded guilty evading arrest or detention in a vehicle. Appellant pleaded true to an enhancement allegation. A jury assessed his punishment at 20 years imprisonment and a \$10,000 fine.

SUMMARY OF ARGUMENT

Appellant's Brief focuses on the absence of the Appellant during a Motion in Limine hearing that preceded the trial.

The absence of Appellant during the entry of his Motion in Limine did not contribute to the conviction or punishment, nor did it influence the jury in any way for the following reasons:

- 1) Appellant's Motion in Limine was granted without any objection by the State and;
- 2) There were no objections made in reference to Appellant's Motion in Limine during the course of the trial.

STATE'S REPLY TO APPELLANT'S POINT OF ERROR

Appellant's point of error speaks directly to his absence while a Motion in Limine hearing occurred before the trial. Appellant is correct that the hearing took place outside of his presence. However, the absence will not cause a reversal if the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. Tex. R. App. P. Rule 44.2(a).

In this case, Appellant argues that his absence during the entry of his Motion in Limine contributed to his conviction and/or punishment. The Waco majority concluded that King was not harmed by the trial court conducting pretrial proceedings in his absence because his absence had no impact on the outcome of the motion in limine. They also opined that King had adequate time to consult with counsel before pleading guilty to the jury the next day. *King v. State*, No. 10-19-

00354-CR, 2020 WL 5667148, at *3 (Tex. App. – Waco Sept. 23, 2020, pet. filed)(mem. op., not designated for publication). The State agrees with this assessment and urges this Court to come to the same conclusion.

Appellant cited the following to explain the “reasonably substantial relationship” test that a Court should rely on to evaluate harm. “So far as the Fourteenth Amendment is concerned, the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.” *Snyder v. Massachusetts*, 291 U.S. 97, 107-108 (1934). The Court of Criminal Appeals, holding that no harm occurred when a defendant was absent during a pre-trial hearing, also stated it could not “envision how appellant's presence could have furthered his defense. The personal insight of appellant was not required in order for the court to make a ruling on the issues raised.” *Adanandus v. State*, 866 S.W.2d 210, 220 (Tex. Crim. App. 1993).

Appellant’s Motion in Limine is a standard Motion requesting that the State and its witnesses refrain from making any direct or indirect reference before the jury in regard to matters not within personal knowledge of a witness. The Motion also requested a pretrial determination of the relevancy and reliability of expert testimony. *See* Exhibit A, Defendant’s Motion in Limine.

The same reasoning that was state in *Adanandus* is true in the present situation. It is true that Appellant was absent for the entry of this motion, but the

motion was granted without any objection by the State. Further, the matters presented in the Motion in Limine were never mentioned or brought up during the course of the trial. The granting of this motion had no effect on the advancement of Appellant's defense, nor did it have any effect on the outcome of the case.

Appellant intelligently and knowingly plead guilty and was given the opportunity to confirm that he wanted to plead guilty to the jury. He was also properly sentenced for his crimes based on the evidence presented against him without objection by his counsel. Therefore, the Court can find beyond a reasonable doubt that the error did not contribute to the appellant's conviction or punishment which would require a new trial.

Appellant's Brief still borders on the allegation of ineffective assistance of counsel. While the record is silent, there is no indication on the record that Appellant and his attorney failed to discuss the ramifications of his decision to plead guilty prior to this hearing. Therefore, there is no evidence that Appellant was "put on the spot" in reference to his decision to plead guilty. The record also fails to reflect that Appellant and his attorney never discussed the Motion in Limine prior to the hearing or the general strategy for the trial. Therefore, Appellant has failed to overcome the presumption that counsel's conduct fell within the wide range of reasonable professional assistance.

PRAYER

WHEREFORE the Appellee prays that the Court upon consideration hereof affirm the decision of the Trial Court and overrule Appellant's Point of Error.

Respectfully submitted by,



**M. BRIAN EVANS
FREESTONE COUNTY ATTORNEY
FREESTONE COUNTY COURTHOUSE
110 S. KEECHI ST.
FAIRFIELD, TX 75840
(903) 389-3977
TBC# 24082972**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief for the State has been delivered via fax to: **E. Allan Bennett**, 510 North Valley Mills Drive, Suite 500, Waco, Texas 76710 on this the 30th day of April, 2021 in accordance with the provisions of the Texas Rules of Criminal and Appellate Procedure. **I also certify that this brief is 934 words.**



M. BRIAN EVANS

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Michael Evans
Bar No. 24082972
brian.evans@co.freestone.tx.us
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Associated Case Party: Justin King

Name	BarNumber	Email	TimestampSubmitted	Status
E AlanBennett		abennett@slm.law	4/30/2021 4:40:22 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Margaret EmilyJohnson-Liu		information@spa.texas.gov	4/30/2021 4:40:22 PM	SENT
Brian Evans		brian.evans@co.freestone.tx.us	4/30/2021 4:40:22 PM	SENT